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PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name AVILA ELIAS D FILED
(Last) (First) (Initial)Prisoner Number F-34850 HIGHWAY 99 PRISONInstitutional Address P.O. BOX 3030 CLERK, U.S. DISTRICT COURT
SUSANVILLE CA. 96127 NORTHERN DISTRICT OF CALIFORNIAUNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIAELIAS DANIEL AVILA
(Enter the full name of plaintiff in this action.)

vs.

FELKER

(Enter the full name of respondent(s) or jailor in this action)

CV

08

3424

Case No. SBA
(To be provided by the clerk of court)PETITION FOR A WRIT
OF HABEAS CORPUS (PR)Read Comments Carefully Before Filling InWhen and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainees), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

- (a) Name and location of court that imposed sentence (for example; Alameda County Superior Court, Oakland):

SAN BENITO COUNTY SUPERIOR COURT HOLLISTER, CA.

Court

Location

- (b) Case number, if known H030600

- (c) Date and terms of sentence 12/19/2058 - 53 YRS TO LIFE

- (d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes ✓ No

Where?

Name of Institution: HIGH DESERT STATE PRISON

Address: P.O. BOX 3030, SUSANVILLE, CA. 96127

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

1. 422 PC

2. 245 (A)(1) PC

3. 422 PC

3. Did you have any of the following?

Arraignment:

Yes ☒ No ☐

Preliminary Hearing:

Yes ☒ No ☐

Motion to Suppress:

Yes ☒ No ☐

4. How did you plead?

Guilty ☐ Not Guilty ☒ Nolo Contendere ☐

Any other plea (specify) _____

5. If you went to trial, what kind of trial did you have?

Jury ☒ Judge alone ☐ Judge alone on a transcript ☐

6. Did you testify at your trial?

Yes ☐ No ☒

7. Did you have an attorney at the following proceedings:

(a) Arraignment

Yes ☒ No ☐

(b) Preliminary hearing

Yes ☒ No ☐

(c) Time of plea

Yes ☒ No ☐

(d) Trial

Yes ☒ No ☐

(e) Sentencing

Yes ☒ No ☐

(f) Appeal

Yes ☒ No ☐

(g) Other post-conviction proceeding

Yes ☐ No ☒

8. Did you appeal your conviction?

Yes ☒ No ☐

(a) If you did, to what court(s) did you appeal?

Court of Appeal

Yes ☒ No ☐

Year: 2006

Result: DENIED

Supreme Court of California

Yes ☒ No ☐

Year: 2007

Result: DENIED

Any other court

Yes ☐ No ☒

Year: _____

Result: _____

(b) If you appealed, were the grounds the same as those that you are raising in this

petition?

Yes ☒ No ☐

(c) Was there an opinion?

Yes ☒ No ☐

(d) Did you seek permission to file a late appeal under Rule 31(a)?

Yes ☐ No ☒

If you did, give the name of the court and the result:

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal?

Yes ☐ No ☒

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: _____

Type of Proceeding: _____

Grounds raised (Be brief but specific):

a. _____

b. _____

c. _____

d. _____

Result: _____ Date of Result: _____

II. Name of Court: _____

Type of Proceeding: _____

Grounds raised (Be brief but specific):

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a. _____
b. _____
c. _____
d. _____
Result: _____ Date of Result: _____

III. Name of Court: _____
Type of Proceeding: _____
Grounds raised (Be brief but specific):
a. _____
b. _____
c. _____
d. _____
Result: _____ Date of Result: _____

IV. Name of Court: _____
Type of Proceeding: _____
Grounds raised (Be brief but specific):
a. _____
b. _____
c. _____
d. _____
Result: _____ Date of Result: _____

(b) Is any petition, appeal or other post-conviction proceeding now pending in any court?
Yes _____ No ☒

Name and location of court: _____

B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened? Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: THE PROSECUTOR COMMITTED MISCONDUCT REQUIRING REVERSAL
6 OF PETITIONER'S CONVICTION BECAUSE THE PROSECUTOR IMPERMISSIBLY

7 Supporting Facts: PETITIONER CONTENDS THAT HIS CONVICTION MUST BE REVERSED
8 BECAUSE HE SUFFERED A CONSTITUTIONAL VIOLATION RENDERING HIS CONVICTION
9 UNFAIR. SPECIFICALLY THE PROSECUTOR IN THE CASE, DURING CLOSING -
10 ARGUMENT, ANALOGIZED THE PEOPLE'S BURDEN OF PROOF BEYOND (CONTINUED)

11 Claim Two: _____

12 _____
13 Supporting Facts: _____

14 _____
15 _____
16 _____
17 Claim Three: _____

18 _____
19 Supporting Facts: _____

20 _____
21 _____
22 _____
23 If any of these grounds was not previously presented to any other court, state briefly which
24 grounds were not presented and why:

1 CLAIM ONE: (CONTINUED) - ALTERED THE PROOF BEYOND A REASONABLE DOUBT -
2 STANDARD, AND THE COURT OVERRULED THE DEFENSE ATTORNEY'S OBJECTION, THE-
3 REBY COMPOUNDING THE ERROR.

4
5 SUPPORTING FACTS: A REASONABLE DOUBT TO A TRAFFIC SIGNAL, BECAUSE THE COURT -
6 DID NOT OVERRULE COUNSEL'S TIMELY OBJECTION, THEREBY INDICATING TO THE JURY THE -
7 COURTS APPROVAL OF THE ANALOGY, PETITIONER'S CONVICTION WAS RENDERED FUNDAMENT -
8 ALLY UNFAIR, IN THAT HE WAS CONVICTED BY A JURY RELYING ON A STANDARD OF PROOF -
9 LESS THAN THAT CONSTITUTIONALLY REQUIRED.

10 A. STANDARD OF REVIEW

11 UNDER THE FIFTH AND SIXTH AMENDMENT TO THE FEDERAL CONSTITUTION, MADE APPLIC -
12 ABLE TO THE STATE BY THE FOURTEENTH AMENDMENT, A DEFENDANT IN A CRIMINAL CASE -
13 IS ENTITLED TO DUE PROCESS OF LAW, INCLUDING THE RIGHT TO A FAIR TRIAL WITH PROPER -
14 INSTRUCTIONS AS TO THE PEOPLE'S BURDEN OF PROOF IN A CRIMINAL CASE, SUCH PRO -
15 CESS REQUIRES THAT THE PEOPLE PROVE BEYOND A REASONABLE DOUBT THAT THE DEFEN -
16 DANT IS GUILTY OF EACH ELEMENT OF THE CRIMES HE IS CHARGED WITH. (IBID.) WHERE
17 THE JURY IS IMPROPERLY INSTRUCTED AS TO THE PROOF BEYOND REASONABLE DOUBT -
18 STANDARD. THE DEFENDANT HAS SUFFERED A DUE PROCESS VIOLATION AND IS ENTITLED
19 TO A REVERSAL OF HIS CONVICTION. (IBID.). WHERE THE DEFENDANT ALLEGES A -
20 CONSTITUTIONAL VIOLATION AT TRIAL, THE STANDARD OF REVIEW IS NORMALLY WHE -
21 THER THE ERROR IS HARMLESS BEYOND REASONABLE DOUBT. HOWEVER WHERE THE -
22 ERROR IS STRUCTURAL IN NATURE, SUCH AS ERROR IN INSTRUCTING THE JURY -
23 ON THE REASONABLE DOUBT STANDARD, THE ERROR IS PER SE AND REVERSAL -
24 IS REQUIRED. (SULLIVAN V. LOUISIANA, SUPRA, 508 U.S. AT PP. 278-282.)

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:

4 CHADMAN V. CALIFORNIA (1967) 386 U.S. 18 - PEOPLE V. BROWN (2003) 31 CAL. 4TH 518 - PEOPLE V. -
5 FREEMAN (1994) 8 CAL. 4TH 450 - PEOPLE V. JOHNSON (2004) 115 CAL. APP. 4TH 1169 - PEOPLE V. -
6 NGUYEN (1995) 40 CAL. APP. 4TH 28 - SULLIVAN V. LOUISIANA (1993) 508 U.S. 275 - VICTOR V. NEBRASKA
7 (1994) 571 U.S. 1

8 Do you have an attorney for this petition?

Yes _____ No X

9 If you do, give the name and address of your attorney:
10 _____
11 _____

12 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
13 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

14 Executed on _____

15 Date

16 Elias David Arila

17 Signature of Petitioner

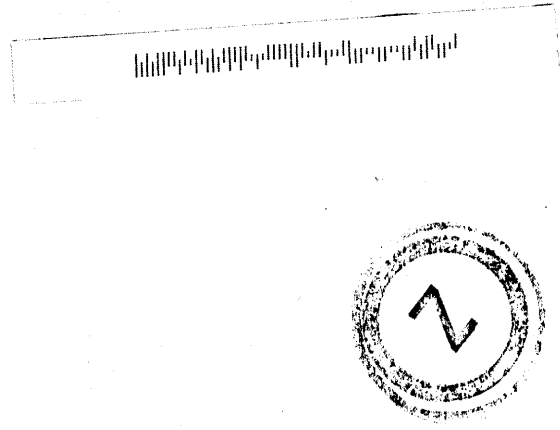
18 (Rev. 6/02)

21 PET. FOR WRIT OF HAB. CORPUS

22 - 7 -

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LEGAL MAIL
STATE PRISON



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HIGH DESERT STATE PRISON

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SIXTH APPELLATE DISTRICT
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SAN JOSE, CA 95113

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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NORTHERN DISTRICT OF CALIFORNIA

U.S. DISTRICT COURT
280 S. FIRST STREET
SAN JOSE, CA 95113

